

House Engrossed

State of Arizona  
House of Representatives  
Forty-fifth Legislature  
Second Regular Session  
2002

CHAPTER 86

# HOUSE BILL 2355

AN ACT

AMENDING SECTION 33-812, ARIZONA REVISED STATUTES; RELATING TO DEEDS OF TRUST.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 33-812, Arizona Revised Statutes, is amended to  
3 read:

4 33-812. Disposition of proceeds of sale

5 A. The trustee shall apply the proceeds of the trustee's sale in the  
6 following order of priority:

7 1. To the costs and expenses of exercising the power of sale and the  
8 sale, including the payment of the trustee's fees and reasonable attorney's  
9 fees actually incurred.

10 2. To the payment of the contract or contracts secured by the trust  
11 deed.

12 3. To the payment of all other obligations provided in or secured by  
13 the trust deed AND ACTUALLY PAID BY THE BENEFICIARY BEFORE THE TRUSTEE'S  
14 SALE.

15 4. To the junior lienholders or encumbrancers in order of their  
16 priority as they existed at the time of the sale. After payment in full to  
17 all junior lienholders and encumbrancers payment shall be made to the  
18 trustor, EXCEPT THAT IF THE TRUSTOR HAS SOLD OR TRANSFERRED THE PROPERTY TO  
19 ANOTHER OWNER BEFORE THE TRUSTEE'S SALE, PAYMENT SHALL BE MADE TO THE PERSON  
20 WHO IS THE OWNER OF RECORD AT THE TIME OF THE TRUSTEE'S SALE.

21 B. The trustee may, in his THE TRUSTEE'S discretion, instead of any  
22 one or more of the applications specified in subsection A of this section,  
23 elect to deposit the balance of such THE proceeds with the county treasurer  
24 in the county in which the sale took place pending an order of the superior  
25 court of IN the county. ~~Upon~~ ON deposit of the balance of such THE monies  
26 and after giving notice of the deposit as prescribed by COMPLYING WITH  
27 subsection C of this section, the trustee shall be discharged from all  
28 responsibility for acts performed in good faith according to the provisions  
29 of this chapter. THE COUNTY TREASURER SHALL REJECT ANY DEPOSIT THAT DOES NOT  
30 COMPLY WITH SUBSECTION C OF THIS SECTION.

31 C. If the trustee elects to deposit the balance of the sale proceeds  
32 as prescribed by subsection B of this section, the trustee AS PLAINTIFF SHALL  
33 COMMENCE A CIVIL ACTION IN THE SUPERIOR COURT IN THE COUNTY IN WHICH THE SALE  
34 OCCURRED. THE ACTION SHALL NAME THE APPLICABLE COUNTY TREASURER AS THE  
35 DEFENDANT. THE TRUSTEE shall mail by certified or registered mail, with  
36 postage prepaid, ~~written notice of the deposit~~ A CONFORMED COPY OF THE  
37 COMPLAINT THAT DISPLAYS THE FILING STAMP OF THE COURT CLERK to all parties  
38 PERSONS other than the beneficiary who are entitled to notice pursuant to  
39 section 33-809 and 10 any other party with PERSON KNOWN BY THE TRUSTEE TO  
40 HAVE an interest of record in the property at the time of the sale. The  
41 ~~notice shall include a list~~ TRUSTEE SHALL INCORPORATE IN OR ATTACH TO THE  
42 COMPLAINT:

43 1. A COPY OF ANY ONE OF THE FOLLOWING:

44 (a) THE TRUSTEE SALE GUARANTEE.

1 (b) THE TITLE SEARCH USED BY THE TRUSTEE IN CONNECTION WITH THE  
2 TRUSTEE'S SALE OF THE SUBJECT PROPERTY.

3 (c) A DETAILED DESCRIPTION of the liens and encumbrances ~~on the trust~~  
4 ~~property that are known to the trustee and a~~ USED BY THE TRUSTEE IN  
5 CONNECTION WITH THE TRUSTEE'S SALE OF THE PROPERTY.

6 2. A COPY OF THE list of the parties PERSONS and EACH OF the addresses  
7 to which the notice was COMPLAINT WILL BE mailed.

8 The trustee may withhold from the proceeds of the sale A REASONABLE TRUSTEE'S  
9 FEE, A REASONABLE ATTORNEY'S FEE ACTUALLY INCURRED AND the costs of FILING  
10 THE COMPLAINT, depositing the proceeds and mailing the notices ~~and a~~  
11 ~~reasonable fee.~~

12 3. A DETAILED DESCRIPTION OF ANY DISBURSEMENTS MADE BY THE TRUSTEE  
13 PURSUANT TO THIS SECTION.

14 D. UPON FILING THE COMPLAINT, THE TRUSTEE AS PLAINTIFF IS DISCHARGED  
15 WITHOUT PREJUDICE FROM THE PROCEEDINGS.

16 ~~D. Any party who has an interest in the proceeds that are deposited~~  
17 ~~pursuant to subsection B of this section may apply for the release of the~~  
18 ~~proceeds by filing a civil action in the superior court in the county in~~  
19 ~~which the proceeds are deposited. The action shall name the applicable~~  
20 ~~county treasurer as the defendant. An applicant shall mail copies of the~~  
21 ~~application to all parties who were mailed a notice of deposit. Any party~~  
22 ~~who claims a right to the proceeds shall file a response to the application~~  
23 ~~within twenty days of the mailing of the application and shall mail copies~~  
24 ~~of the response to all parties. The applicant may file and mail a reply to~~  
25 ~~the response within ten calendar days of the mailing of the response. After~~  
26 ~~the expiration of the time for filing a reply, the court may hold a hearing~~  
27 ~~and shall issue an order directing the county treasurer to release the~~  
28 ~~proceeds to the person who is entitled to receive them.~~

29 E. ANY PERSON WITH A RECORDED OR OTHER LEGAL INTEREST IN THE PROPERTY  
30 AT THE TIME OF THE SALE MAY APPLY FOR THE RELEASE OF THE PROCEEDS BY FILING  
31 AN APPLICATION FOR DISTRIBUTION IN THE CIVIL ACTION THAT WAS FILED BY THE  
32 TRUSTEE PURSUANT TO SUBSECTION C OF THIS SECTION. THE APPLICANT SHALL MAIL  
33 POSTAGE PREPAID BY ANY FORM OF MAIL THAT REQUIRES A SIGNED AND RETURNED  
34 RECEIPT A COPY OF THE APPLICATION TO ALL PERSONS AT EACH OF THE ADDRESSES  
35 NAMED ON THE LIST OF PERSONS THAT IS INCORPORATED IN OR ATTACHED TO THE  
36 COMPLAINT. ON RETURN OF THE SIGNED RECEIPT OR THE UNDELIVERED OR UNCLAIMED  
37 ORIGINAL ENVELOPE, THE APPLICANT SHALL FILE WITH THE COURT AN AFFIDAVIT THAT  
38 STATES THAT THE APPLICATION WAS MAILED TO THE PERSON AND THAT THE APPLICATION  
39 WAS EITHER:

40 1. RECEIVED, AS EVIDENCED BY THE RECEIPT. THE APPLICANT SHALL ATTACH  
41 TO THE AFFIDAVIT A COPY OF THE RECEIPT.

42 2. NOT RECEIVED, AS EVIDENCED BY THE ORIGINAL RETURNED ENVELOPE. THE  
43 APPLICANT SHALL ATTACH TO THE AFFIDAVIT THE ORIGINAL UNOPENED AND UNDELIVERED  
44 OR UNCLAIMED RETURNED ENVELOPE.

1 F. ANY PERSON WHO RECEIVES THE APPLICATION OR WHO CLAIMS A RIGHT TO  
2 THE PROCEEDS MAY FILE A RESPONSE TO THE APPLICATION WITHIN THIRTY DAYS OF THE  
3 MAILING OF THE APPLICATION. THE PERSON FILING A RESPONSE SHALL MAIL A COPY  
4 OF THE RESPONSE TO EACH APPLICANT. WITHIN TEN CALENDAR DAYS FROM THE DATE  
5 THE RESPONSE IS MAILED, AN APPLICANT MAY FILE WITH THE CLERK AND MAIL TO EACH  
6 RESPONDENT A REPLY TO THE RESPONSE. ON EXPIRATION OF THE TIME FOR FILING A  
7 REPLY, AN APPLICANT SHALL PROVIDE THE COURT WITH POSTAGE PREPAID BUSINESS  
8 ENVELOPES THAT ARE ADDRESSED TO ALL PERSONS WHO ARE ENTITLED TO RECEIVE  
9 COPIES OF THE COMPLAINT PURSUANT TO SUBSECTION C OF THIS SECTION.

10 G. THE COURT SHALL ISSUE AN ORDER TO THE COUNTY TREASURER TO RELEASE  
11 THE PROCEEDS DEPOSITED WITH THE COUNTY TREASURER TO THE PARTY ENTITLED TO  
12 RECEIVE THEM AFTER APPLYING THE PRIORITIES PRESCRIBED BY SUBSECTION A OF THIS  
13 SECTION. ON NOTICE TO ALL PERSONS WHO HAVE RECEIVED A COPY OF THE COMPLAINT  
14 OR WHO HAVE FILED A RESPONSIVE PLEADING, THE COURT MAY, AND IF THERE ARE  
15 COMPETING CLAIMS TO THE PROCEEDS, THE COURT SHALL, HOLD A HEARING TO  
16 DETERMINE ENTITLEMENT TO THE PROCEEDS. IF THE COURT FINDS THAT A PERSON  
17 OTHER THAN AN APPLICANT OR RESPONDENT HAS A SUPERIOR RIGHT TO RECEIVE THE  
18 PROCEEDS, THE COURT SHALL NOT ISSUE AN ORDER ON THE PROCEEDS UNTIL ONE  
19 HUNDRED EIGHTY DAYS FROM THE DATE THE COMPLAINT WAS FILED. AT ANY TIME  
20 BEFORE THE EXPIRATION OF THE ONE HUNDRED EIGHTY DAY PERIOD, AN APPLICANT OR  
21 RESPONDENT MAY MOVE FOR A HEARING TO DETERMINE WHETHER THE CLAIMED SUPERIOR  
22 RIGHT IS VALID OR ENFORCEABLE AND WHETHER THE CLAIM IS ENTITLED TO RECEIVE  
23 PRIORITY OVER THE CLAIM OF THE APPLICANT OR RESPONDENT. THE MOTION SHALL SET  
24 FORTH THE SPECIFIC FACTS AND EVIDENCE THAT SUPPORT THE APPLICANT'S OR  
25 RESPONDENT'S POSITION AND SHALL BE MAILED TO ALL PERSONS WHO HAVE RECEIVED  
26 A COPY OF THE COMPLAINT OR FILED A RESPONSIVE PLEADING. IF A RESPONSE IS NOT  
27 FILED WITHIN THE ONE HUNDRED EIGHTY DAY PERIOD BY THE PERSON FOUND BY THE  
28 COURT TO HAVE A SUPERIOR RIGHT TO RECEIVE THE PROCEEDS, THE COURT SHALL ENTER  
29 AN ORDER IN FAVOR OF ANY APPLICANT OR RESPONDENT ENTITLED TO THE PROCEEDS.  
30 ON RELEASE OF THE PROCEEDS, THE COUNTY TREASURER MAY ASSESS AND DEDUCT FROM  
31 THE PROCEEDS A REASONABLE FEE NOT TO EXCEED ONE HUNDRED DOLLARS FOR THE  
32 TREASURER'S COSTS ASSOCIATED WITH THE CIVIL ACTION.

33 ~~E. H. WITHIN NINETY DAYS AFTER COMPLETION OF THE SALE, the trustee~~  
34 ~~shall dispose of~~ APPLY the proceeds of the sale pursuant to SUBSECTION A OF  
35 ~~this section within ninety days after completion of the sale~~ OR SHALL DEPOSIT  
36 THE PROCEEDS WITH THE TREASURER PURSUANT TO SUBSECTION B OF THIS SECTION.

37 Sec. 2. Applicability

38 This act applies to all trustee's sales that are completed after the  
39 effective date of this act.

APPROVED BY THE GOVERNOR APRIL 29, 2002.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 30, 2002.

Passed the House March 26, 2002,

by the following vote: 57 Ayes,

1 Nays, 2 Not Voting

[Signature]  
Speaker of the House

Norman L. Moore  
Chief Clerk of the House

Passed the Senate April 23, 2002

by the following vote: 28 Ayes,

0 Nays, 2 Not Voting

[Signature]  
President of the Senate

Charmine Bellington  
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF GOVERNOR

This Bill was received by the Governor this

24 day of April, 2002

at 11:01 o'clock A M.

[Signature]  
Secretary to the Governor

Approved this 29<sup>th</sup> day of

April, 2002,

at 2:03 o'clock P M.

[Signature]  
Governor of Arizona

H.B. 2355

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 30 day of April, 2002,

at 11:50 o'clock A M.

[Signature]  
Secretary of State